

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALTAPURE, LLC,

Plaintiff,

v.

Case No. 2:18-cv-1667

SURFACIDE, LLC, and ONEBEACON
INSURANCE GROUP

Defendants.

NOTICE OF REMOVAL

To The United States District Court for the Eastern District of Wisconsin:

Defendant Surfacing, LLC (“Surfacing”), hereby removes the state court action captioned as *Altapure, LLC v. Surfacing, LLC, and OneBeacon Insurance Group*, Case No. 18CV1334, in the Circuit Court of Waukesha County, Wisconsin, to this Court pursuant to 28 U.S.C. §§ 1338, 1441, and 1446 and 15 U.S.C. § 1121. In support of this Notice of Removal, Surfacing states as follows:

1. Plaintiff Altapure, LLC (“Altapure”), initiated this lawsuit against Surfacing, (incorrectly named as Surfacing Services, LLC), by filing a Complaint in the Circuit Court of Waukesha County, Wisconsin, on July 30, 2018 alleging state law claims. A copy of the Complaint is attached as **Exhibit A**.

2. On September 19, 2018, the Parties filed a stipulated motion to substitute Surfacing, LLC in place of Surfacing Services, LLC and agreed to give Surfacing until October 10, 2018 to answer or otherwise respond to the Complaint. A copy of the stipulation is attached as **Exhibit B**.

3. On October 8, 2018, Altapure filed its First Amended Complaint, of which Surfacide received notice. The First Amended Complaint for the first time alleged jurisdiction was based on 15 U.S.C. 1125(a), Section 43(b) of the Lanham Act. Removal is therefore timely because Surfacide has removed the case within thirty days of being served with notice of the First Amended Complaint that set forth the claim for relief upon which removal is based. **Exhibit C** is a copy of the First Amended Complaint.

4. On October 15, 2018, Altapure re-filed its First Amended Complaint, of which Surfacide received notice. The refiled First Amended Complaint was to correct the wrong Surfacide entity identified in the caption. **Exhibit D** is a copy of the second First Amended Complaint.

5. **Exhibit E** constitutes all other process, pleadings and orders filed in the State Court Action.

6. Written notice of this filing is concurrently being given to the adverse party as required by law. A true and accurate copy of this Notice of Removal and the Notice of Filing of Removal of Civil Action are concurrently being filed with the Clerk of the Circuit Court of Waukesha County, Wisconsin, as required by 28 U.S.C. § 1446(d), with the Notice of Removal of Civil Action attached as an exhibit thereto.

7. This case is properly removable to this Court because Altapure has satisfied the procedural requirements for removal pursuant to 28 U.S.C. §§ 1441 and 1446 and this Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1338 and 15 U.S.C. § 1121 because Altapure has plead claims arising under the Lanham Act, which confers federal subject-matter jurisdiction.

8. Venue is proper in the Eastern District of Wisconsin because the Circuit Court of Waukesha County, Wisconsin, is within the Eastern District of Wisconsin.

9. In filing this Notice of Removal, Surfacide does not waive any defenses that may be available to it.

WHEREFORE, Defendant Surfacide, LLC hereby removes the matter captioned *Altapure, LLC v. Surfacide, LLC, and OneBeacon Insurance Group*, Case No. 18CV1334, in the Circuit Court of Waukesha County, Wisconsin to this Court pursuant to 28 U.S.C. §§ 1338, 1441, and 1446 and 15 U.S.C. § 1121, and requests that this Court retain jurisdiction for all further proceedings and place this Action on its docket. In the event Plaintiff seeks to remand this case, or the Court considers remand *sua sponte*, Surfacide requests the opportunity to submit additional arguments to evidence in support of removal as may be necessary.

Respectfully submitted,

Dated this 19th day of October, 2018.

s/Johanna M. Wilbert
DAVID P. MUTH
State Bar No. 1027027
JOHANNA M. WILBERT
State Bar No. 1060853
QUARLES & BRADY LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202-4497
414-277-5000

Attorneys for Defendant Surfacide, LLC